



OCR provides further guidance on Massachusetts court decision (VRLC)

August 25, 2021

In a publication [posted](#) last week, we told you about a recent decision from the United States District of Massachusetts, *Victim Rights Law Center, et al. v. Cardona*, and the potential impact this decision might have on your Title IX policies. In response to this decision, the Department of Education Office for Civil Rights (OCR) issued [a letter on August 24, 2021](#), which addresses the court's finding and announces that, "[i]n accordance with the court's order, the Department will **immediately cease enforcement** of the part of 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination."

The letter explains that postsecondary decision-makers, in reaching a determination regarding responsibility, may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing. Statements that may now be considered, even without cross-examination, include interview statements, emails or text exchanges between the parties, police reports, SANE reports and medical records, as long as the statements satisfy the regulation's rules on relevance.

The new letter concludes by reminding institutions that OCR is currently undertaking a comprehensive review of the Department's existing Title IX regulations, orders, guidance and policies and expects to issue a notice of proposed rulemaking in the future.

While OCR's letter provides much-needed clarity on the issue of prohibiting the consideration of statements not subject to cross-examination, institutions should continue to work with their legal counsel to assess the risks associated with changing their Title IX policy, particularly in states where such policies are considered to be contracts and where Title IX cases are currently pending.

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